

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CIVIL NO. 5:10-cv-115-DCB
CRIMINAL NO. 5:07-cr-17-DCB

JOHN DILLARD

DEFENDANT

ORDER

This cause is again before the Court on Petitioner's Motion for Reconsideration [**docket no. 371**] of the February 23, 2012 Order [docket no. 349] denying his request for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). Petitioner argues that the Eleventh Circuit's opinion, United States v. Liberse, --- F.3d ---, 2012 WL 3064287 (11th Cir. July 20, 2012), holds that this Court has the discretion to depart from 21 U.S.C. § 846's ten-year (10) mandatory minimum sentence.

Petitioner, however, misunderstands Liberse, which merely applied 18 U.S.C. § 3582(c)(2). See Liberse, 2012 WL 3064287, at *4. That subsection provides that the Court may modify a term of imprisonment "in the case of a defendant who has been sentenced to a term of imprisonment *based on a sentencing range* that has subsequently been lowered by the Sentencing Commission" (Emphasis added). Because Petitioner's sentence was based on the mandatory minimum—not the sentencing range—the § 3582(c)(2) exception does not apply, and the Court has no discretion to alter the length of Petitioner's imprisonment. **IT IS THEREFORE HEREBY**

ORDERED that Petitioner's Motion for Reconsideration [**docket no.**
371] is **DENIED**.

SO ORDERED, this the 11th day of September 2012.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE